

ALLOW DIRECTOR OF EGLE TO ISSUE EMERGENCY ORDERS

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Senate Bill 398 (S-3) as reported from House committee

Sponsor: Sen. Sean McCann

**House Committee: Natural Resources, Environment,
Tourism and Outdoor Recreation**

Senate Committee: Natural Resources and Agriculture

Complete to 6-24-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 398 would amend the Natural Resources and Environmental Protection Act (NREPA) by adding a new section, section 30111d, which would allow the director of the Department of Environment, Great Lakes, and Energy (EGLE) to issue a written emergency order that requires any person determined by EGLE to be in violation of Part 301 of NREPA to take emergency action necessary to prevent significant harm to the public health, safety, welfare, property, or natural resources or the public trust in natural resources. This emergency action could include, among other things, immediate repair or removal of a structure or fill owned by the person and located on *bottomlands*. However, the bill states that this power to issue a written emergency order would not expand EGLE's authority under Part 315 (Dam Safety), as limited by section 31506(2)(a),¹ which relates to projects permitted under certain federal authority.

Part 301 of NREPA contains provisions regarding inland lakes and streams. Presently, *bottomland* is defined as the land area of an *inland lake or stream* that lies below the ordinary high-water mark and that may or may not be covered by water.

Inland lake or stream means either of the following:

- An artificial or natural lake, pond, or impoundment that is a water of the United States as that term is used in 33 USC 1362.
- A natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the Drain Code; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Mary's, St. Clair, and Detroit Rivers, but not including the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than five acres.

If a person fails to comply with an emergency order or is unavailable or unable to be contacted, EGLE could take the action necessary and recover the costs incurred from that person in a civil action in a court of competent jurisdiction. The director could modify an emergency order and could also terminate an emergency order upon a determination in writing that all necessary emergency actions have been completed and that an emergency no longer exists.

Within 15 days after the emergency order's issuance, EGLE would have to provide the person who received the emergency order with an opportunity for a hearing as provided under Chapter

¹ MCL 324.31506: <http://legislature.mi.gov/doc.aspx?mcl-324-31506>

4 of the Administrative Procedures Act. At the hearing, the director would have to determine, based on information and fact, whether the issued emergency order must be continued, modified, suspended, or terminated as necessary for, or consistent with, the protection of public health, safety, welfare, property, or natural resources or the public trust in natural resources.

The bill would also limit this section so it would not apply to a structure or fill failure that causes damage limited to agriculture, uninhabited buildings or structures, minor collector roads, local roads, or nonrated roadways as defined in the National Functional Classification system, if environmental degradation will be minimal and danger to individuals is slight or nonexistent.

Proposed MCL 324.30111d

BRIEF DISCUSSION:

Similar to House Bill 4832 as it was reported from committee, Senate Bill 398 was also introduced to address an issue arising from repairs made to the Morrow Dam on the Kalamazoo River in Kalamazoo County in 2019. These repairs resulted in an estimated several hundred thousand cubic yards of sediment being released downstream, which was not authorized as part of the repairs. Residents and community members along the river have been pushing EGLE for remediation of issues caused by the released sediment. However, EGLE does not have statutory authority to use in emergency situations, and remediation has been slow to occur. The bill would give the director of EGLE a more expedient way to order remediation to begin on cleaning up these types of accidents.

FISCAL IMPACT:

Senate Bill 398 is unlikely to directly or immediately increase costs for EGLE. The department may realize increased costs if it becomes necessary to repair or remove a bottomlands structure or fill as described in the bill. Similarly, EGLE may realize increased administrative costs while assessing the significant harm or imminent danger caused by bottomlands structures or fills under the bill. The bill provides a means for EGLE to cover these costs through pursuit of a civil action. The bill is unlikely to affect costs or revenues for local governments.

POSITIONS:

Clean Water action testified in support of the bill. (6-13-24)

The following entities indicated support for the bill (6-13-24):

- Department of Environment, Great Lakes, and Energy
- Michigan Environmental Council

Legislative Analyst: Josh Roesner

Fiscal Analyst: Austin Scott

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.